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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,609	10/31/2003	John W. Koenig	7175-73841	9877

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EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/698,609

Applicant(s)

KOENIG ET AL.

Examiner

FREDRICK C CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-26, 29-35, 37 and 42 is/are rejected.
- 7) ☒ Claim(s) 27, 28, 36 and 38-41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/9/04 & 2/5/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27, 29-36, and 38-41 of U.S. Patent No. 6,684,420. Although the conflicting claims are not identical, they are not patentably distinct from each other because the apparatus comprises a mattress, a crib structure, a movable crib rail assembly, a movable tray, and a second end having a storage compartment.

### ***Conclusion***

Claim 15 recites the limitation "the deck". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,921,233 to Mann.

In reference to claim 9, Mann discloses an apparatus including

a mattress having a periphery and an upwardly facing surface,

a crib structure configured to support the mattress, the crib structure having a plurality of crib rail assemblies (34,36) with a pair of spaced apart end units, each end unit having a top surface 35, the crib rail assemblies positioned about the periphery of the mattress and movable vertically relative to the mattress, each of the crib rail assemblies having a top rail edge 35, the mattress and crib rail assemblies are capable of being moved to a position in which the top surfaces of the end units, the top edges of the crib rail assemblies are inherently capable of traveling from an upward position through a substantially coplanar position with the upwardly facing surface of the mattress to a downward position as shown in figure 5.

Claim 10, Mann discloses an apparatus including a mattress,

a crib structure configured to support the mattress, the crib structure including a plurality of crib rail assemblies (34,36) each having a pair of spaced apart side edges

the crib rail assemblies being movable vertically relative to the mattress, between a raised position and a lowered position, each crib rail assembly being movable independent of each of the other crib rail assemblies (fig. 4), a plurality of gaps between side edges, the side edges interpreted to be the last vertical post adjacent a corner, the gaps between the vertical post being capable to permit passage of medical lines there-through.

Claims 11-14 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 1,440,943 to Szabo.

Claim 11, Szabo discloses a patient support apparatus including:

a crib having a support surface 38 configured to support a frame for a patient's body in a reclining position; and

a chair 26 extending outwardly from the crib configured to support the patient's body in a seated position.

Claim 12, wherein the chair includes a seat extending outwardly from the support surface of the crib.

Claim 13, wherein the crib includes a pair of spaced apart, side rails and a pair of spaced apart end rails extending there-between forming an interior region within which the support surface is received.

Claim 14, wherein at least one of the side rails 17 is movable vertically relative to the support surface.

Claim 18, having an opening defined between the vertical post of the rail assemblies the side rail interpreted as the plurality of vertical post extending between

the ends of the rail assembly and the end rail interpreted as the plurality of vertical post at the head and foot ends of the rail assembly.

Claim 19, wherein the opening is a vertical opening.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 2,733,455 to Stuart et al. in view of U.S. Pat. No. 1,440,943 to Szabo.

Claim 1, Stuart discloses an apparatus including  
a mattress,  
a crib structure configured to support the mattress (fig. 1), the crib structure including a tray 28 movable relative to the mattress. Stuart fails to disclose a chair portion. Szabo discloses a crib having a chair 26 extending outwardly from the crib. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a seat as taught by Szabo in order to provide a toilet.

Claim 2, Stuart discloses an apparatus including  
a mattress, and  
a crib structure configured to support the mattress (fig. 1),  
a tray 28 that is horizontally movable, and

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a crib rail assembly 8 that is movable vertically (col. 1 lines 64-68). Stuart fails to disclose a chair portion. Szabo discloses a crib having a chair 26 extending outwardly from the crib. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a seat as taught by Szabo in order to provide a toilet.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,776,824 to LoTurco in view of U.S. Pat. No. 1,440,943 to Szabo.

Claim 3, LoTurco discloses an apparatus including  
a mattress, and  
a crib structure configured to support the mattress, the crib structure including a manual drive assembly (col. 2 lines 60-64) that is operable to change the position of the mattress relative to the chair portion. Szabo discloses a crib having a chair 26 extending outwardly from the crib. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a seat as taught by Szabo in order to provide a toilet.

With regards to claim 4, LoTurco discloses all of the Applicant's claimed limitations except for having the drive assembly electrically powered. It is well known to employ alternative means to provide power to a drive assembly and the Examiner takes Official Notice of the use of an electrically powered means to drive the assembly of LoTurco in order to lift the support surface.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,854,913 to Kelly et al. in view of U.S. Pat. No. 3,706,105 to Nicholas.

Claim 8, Kelly discloses an apparatus including;

a mattress,

a crib structure configured to support the mattress (fig. 1), the crib structure including a chair portion 24 adjacent an end portion 19 having an upwardly facing seat surface and a back surface extending above the seat surface and terminating at a top edge. Kelly fails to disclose a tray. Nicholas discloses a portable tray 16 positioned over the end portion of a crib structure. It would have been obvious at the time of the invention to employ the tray as taught by Nicholas in order to provide a portable playing surface for the child wherein the tray is positioned to cover the seat and top edge of the chair of Kelly and removed to uncover a portion of the seat when not in use.

Claims 11-26, 29-35, 37-38, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,921,233 to Mann in view of U.S. Pat. No. 1,557,255 to Hill.

Claim 11, Mann discloses a patient support apparatus including:

a crib having a support surface 38 configured to support a patient's body in a reclining position. Mann fails to disclose a chair. Hill discloses a crib having a chair 18 extending outwardly from the crib. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a seat as taught by Hill in order to provide a support for the infant while eating.



Claim 12, wherein the chair includes a seat 18 extending outwardly from the support surface of the crib.

Claim 13, wherein the crib includes a pair of rail assemblies (34,36) comprising spaced apart, side rails and a pair of spaced apart end rails extending there-between forming an interior region within which the support surface is received.

Claim 14, wherein at least one of the side rails is movable vertically relative to the support surface.

Claim 15, wherein at least one of the end rails is movable vertically relative to the support surface.

Claim 16, wherein the side and end rails each include a top edge capable of movement between positions above, level with and below the support surface (fig. 5).

Claim 17, wherein the side and end rails each include a top edge capable of movement between positions above, level with and below the support surface (fig. 5).

Claim 18, having an opening defined by the space between the vertical post of the crib rail assemblies of one of the end rails and one of the side rails.

Claim 19, wherein the opening is a vertical opening.

Claim 20, further including a canopy (60,62) positioned adjacent the top edges of the side and end rails.

Claim 21, wherein the chair further includes slats (24a) provided adjacent one of the end rails capable of supporting a users back.

Claim 22, wherein the support surface is movable vertically relative to the rest of the apparatus (col. 4 lines 16-17).

Claim 23, wherein the chair is capable of supporting a second patient in a seated position while the crib is capable of concurrently supporting the patient in the reclining position.

Claim 24, Mann discloses a crib:

a deck having a head end, a foot end and generally parallel sides;

first and second rail assemblies (34,36) defining generally parallel side rails each positioned adjacent one of the sides; first and second end rails, the first end rail positioned adjacent the head end of the deck and the second end rail positioned adjacent the foot end of the deck; and

a base (16,18) coupled to the deck and the seat. Mann fails to disclose a seat. Hill discloses a crib having a seat 18 extending outwardly from the crib with a side end positioned adjacent/to the rear of the head or foot end of the deck. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a seat as taught by Hill in order to provide a support while the infant is eating.

Claim 25, further including a backrest 23 extending upwardly from the end positioned adjacent to or to the rear of the head or foot end of the deck.

Claim 26, wherein the seat includes a pair of side walls 22, each extending from one the side ends.

Claim 29, wherein at least one of the side rails (24a) is movable vertically relative to the deck.

Claim 30 wherein at least one of the end rails is movable vertically relative to the deck.

Claim 31, wherein the side rails and end rails are movable vertically relative to the deck.

Claim 32, wherein each side rail and end rail includes a top edge 35 movable among positions above, level with and below the deck (fig. 5).

Claim 33, having a slot formed by adjacent vertical rails provided between one of the end rails and one of the side rails.

Claim 34, wherein the deck is movable relative to the rest of the apparatus (col. 4 lines 16-17).

Claim 35, having a height sufficient to provide convenient access by a person to the deck without having to bend substantially at the person's waist.

Claim 37, further including an end section adjacent each of the head and foot ends of the deck.

Claim 38, wherein each of the end sections is configured to receive one of the end rails.

Claim 42, Mann discloses a crib including:

a means 38 for supporting the patient in a resting position. Mann fails to disclose a means for supporting the patient in a seated position. Hill discloses a means 18 for supporting the patient in the resting position being concurrent with a means 26 for supporting the patient in the seated position. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a seat as taught by Hill in order to provide a support while the infant is eating.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,776,242 to LoTurco in view of U.S. Pat. No. 1,440,943 to Szabo, and further in view of U.S. Pat. No. 5,613,255 to Bish et al.

Claims 5-6, LoTurco discloses all of the Applicant's claimed limitations except for the drive assembly powered hydraulically or pneumatically. Bish discloses a drive assembly powered hydraulically or pneumatically (col. 2 lines 46-48). It would have been obvious to one having ordinary skill in the art at the time of the invention to have the drive assembly powered hydraulically or pneumatically in order to lift the support surface of LoTurco.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,921,233 to Mann in view of U.S. Pat. No. 1,577,255 to Hill, and further in view of U.S. Pat. No. 4,768,242 to LoTurco.

Claim 7, Mann discloses an apparatus including  
a mattress 38, and  
a crib structure configured to support the mattress, the crib structure  
including a plurality of crib rail assemblies (34,36) and a unit 39 having a first end and second end wherein the plurality of crib rail assemblies are movable relative to the first and second ends. Mann fails to disclose a chair. Hill discloses a crib having a chair 18. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a seat as taught by Hill in order to provide a support while the infant is eating. Mann also fails to disclose a storage compartment. LoTurco discloses a unit having storage compartments (102,103). It would have been obvious to one having

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ordinary skill in the art at the time of the invention to employ the storage compartments as taught by LoTurco in order to provide convenient storage.

***Allowable Subject Matter***

Claims 27-28, 36, and 39-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 703-308-7468. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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